Nos. 83-1721, 83-1386, 83-1838

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF MISSOURI, et al.,
Petitioners,

vs.

CRATON LIDDELL, et al.,

and

EARLINE CALDWELL, et al.,

and

JANICE ADAMS, et al.,

and

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,

and

THE CITY OF ST. LOUIS, MISSOURI,

and

THE UNITED STATES OF AMERICA,
Respondents.

SUPPLEMENTAL BRIEF FOR LIDDELL RESPONDENTS IN OPPOSITION

JOSEPH S. McDUFFIE and
WILLIAM P. RUSSELL*
408 Olive Street, Suite 206
St. Louis, Missouri 63102
(314) 621-4525
Attorneys for Liddell Respondents

*Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED:

TABLE OF APPENDIXES

L.R. App. G - Liddell Plaintiffs' Suggested Findings: Pg. 8, Paragraph 28 and concluding on Pg. 9. Conclusions: Pg. 34, Paragraph b. 469 F. Supp. - Findings of Facts: Pgs. 10, 11, 13, 28, 41 and 107.

L.R. App. H - Liddell Plaintiffs' Supplemental Pleadings and Memorandum in Support Thereof: H(1027)82.

L.R. App. I - R.S.Mo. 162.571 et seq. St. Louis City Metropolitan School District.

L.R. App. J - Excerpts from State Defendants' Brief" as Requested by Court "in its letter of May 5, 1980".

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-1721-83-1386-83-1838

STATE OF MISSOURI, ET AL.,

PETITIONERS,

VS.

CRATON LIDDELL, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR CRATON LIDDELL, ET AL., IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, was filed February 8, 1984 as slip opinion No. 83-2140. The opinion is reprinted as Appendix A in the separate Appendix of Petitioner's Application. The opinion of the District Court is reported at 567 F.Supp. 1030. It is also reprinted as Appendix B in the separate appendix of Petitioner's Application.

JURISDICTION

The judgment of the Court of Appeals en banc was entered on February 8, 1984. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Respondents herein, Craton Liddell, by his next friend, Minnie Liddell; JoAnna Goldsby, by her next friend, Barbara Goldsby; Deborah Yarber, by her next friend, Samuel Yarber; Nathalie Moore, by her next friend, Louise Moore, and Rachelle LeGrand, by her next friend, Lois LeGrand; members of the Con-

cerned Parents, an unincorporated association, filed this suit on behalf of themselves and all other school age children and their parents, who were similarly situated in the City of St. Louis, Missouri - February 18, 1972.

An attempt was made to settle this litigation in 1975 by the filing of a consent decree. This move was resisted by the intervention of the NAACP. This phase of the litigation is set forth in Liddell vs. Caldwell (Liddell I), 546 F.2d. 768 (1976), cert. denied, 433 U.S. 914 (1976). The NAACP representing the Caldwell plaintiffs were permitted to intervene as a class of plaintiffs. The District Court permitted the City of St. Louis and other parent groups to intervene as plaintiff - Intervenors.

Under date of July 13, 1977, the State of Missouri the State Commissioner of Education and the State Board of Education were joined as defendants by order of Judge James H. Meredith of the District Court.

The District Court ruled in its July 13, 1977

Order that all parties (intervenors and new defendants alike) are bound by the original pleadings the same as if they were original parties. Thus, if there are allegations in the original petition making a complaint against the State of Missouri and its agents School districts then the State of Missouri as a defendant is bound by those pleadings. The State's contention that no claim has been made against it would indicate that the State never read the original petition, or the plaintiff's Supplemental Pleadings. It would appear that a tactical decision "backfired" against the State.

These Respondents (the Liddell Plaintiffs) state that the original petition pleaded a cause of action against the State of Missouri and its agents. 1/ The State of Missouri filed in its pleading an admission of proper party, but denied responsibility for segregation in the City of St. Louis school system. The District Court was of the opinion that the Constitutional liability of defendant City Board of Education, et al. had not been determined

or admitted. Therefore, the District Court informed all parties that the schedule hearings would determine the constitutional liability of all defendants, including the State defendants. This was necessary because of three recent Supreme Court decisions, to wit: (all decided in 1977) Dayton Bd. of Ed. vs. Brinkman, 433 U.S. 406 (1977) Milliken vs. Bradley, 433 U.S. 267 (1977) School Dist. of Omaha vs. U.S., 667, (1977).

1/ Respondents alleged in their petition among other (L.R. App. A), "that the laws of Missouri vested the Board of Education of the City of St. Louis with general and supervising control and management of Public schools. . .Plaintiff further state that defendants, the Board of Education of the City of St. Louis and its individual members, the Superintendent and Acting Superintendent of Schools of said Board, and the District Superintendent of the districts within the Metropolitan school district of the City of St. Louis in the exercise of the functions of the state which have been delegated to them by the laws of Missouri, are required to conduct and superintend the business relating to the public schools of the City of St. Louis in a manner consistent with the requirements of the Constitution and laws of the United States, and to implement the legitimate public policy of the State of Missouri to provide, furnish, and make available equal raciallly non-segregated, racially non-discriminatory educational opportunities for all regardless of race, creed natural origin, color or sex, and to eliminate and prohibit segregated or separate schools or school

In deciding to hold a trial on the merits:

the courts said in its July 13, 1977 order:

"In the light of recent Supreme Court cases: Milliken vs. Bradley, No. 76-447, decided June 27, 1977; Dayton Board of Education vs. Brinkman, No. 76-539, decided June 27, 1977; and School District of Omaha v. United States, No. 76-705, decided June 29, 1977, it is necessary for this Court to determine if there has been a constitutional violation by the defendants.

This determination has never been made by the consent decree nor the stipulation of facts, and the stipulation of facts denies any constitutional violation by defendants.

1/ (Footnote continued)

districts on the basis of race, creed, or color; that the said defendants are further obligated to report and recommend to the legislative body of the state or of the city remedies to rid the system of the observed imperfections in the operation of the schools in their district; and that the said defendants are proper parties defendants to this action.

"That defendants and their predecessors in office in the exercise of the delegated educational functions of the State of Missouri have engaged in acts, practices, customs and usages which have had the natural, probable, foreseeable, and actual effect of incorporating into the public schools and the public school system of the metropolitan district of the City of st. Louis, the public and private residential racial segregation and discrimination practices of the State of Missouri and of the City of St. Louis in violation of the right of plaintiffs not to be segregated

All parties are bound by the stipulation of facts and the consent decree. The remedy to be adopted by the Court will depend on the nature and extent of the constitutional violation, if any. These matters willbe considered by the Court at the July 25, 1977, hearing in light of the evidence introduced and the briefs of the parties."

After a 37 day trial over 6 months, the District Court found:

1. That prior to 1954 the constitution of Missouri mandated separate schools for black and white pupils.

2. This provision remained in the constitution until 1976.

3. The State Board of Education has always had constitutional and statutory authority (among other things) to supervise educational instruction.

1/ (Footnote continued)

on the basis of race in public schools and the school districts established and maintained by defendant in the metropolitan school district of the City of St. Louis."

"Plaintiffs further states that for years prior to 1954, the State of Missouri, through its constitution and laws, the customs, policies, and practices of its instrumentalities, including but not limited to, its school districts, mandated and enforced both public and private racial segregation, including, but not limited to, public

4. The State determined Educational Policies.

5. The State of Missouri and the City of St. Louis School District had fulfilled their obligations to creat a unitary school system in

---

1/ (Footnote continued)

school education, the effects of which persist in the affairs of defendants in administering the public school system of the metropolitan district of the City of St. Louis, all of which had and continues to have the purpose and effect of denying equal educational opportunities and equal opportunities based on education, to black citizens and students by compelling the attendance of black students in segregated schools, and which denies to plaintiffs and the class on whose behalf they sue, the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

"That defendants and their predecessors in office since 1954, pursuant to a policy, practice, custom and usage of racial discrimination denying Fourteenth Amendment rights, have by the devices, inter alia, of separate and racially discriminatory curriculum within the schools and school districts, frequent redistricting of school boundaries and school district boundaries, new school locations and construction, the assignment of all children to schools within the metropolitan district of the City of St. Louis, and the assignment of teachers in the school system, have acted affirmatively to create, support, maintain and continue to support and maintain a dual biracial school system in the Metropolitan School District of the City of St. Louis which denies to black children equal education opportunities; and that defendants have failed to

1955 and 1956 by the adoption of the Neighborhood School Policy in the City of St. Louis school system. Liddell v. Board of Education, City of St. Louis, et al., 469 F. Supp. 1304 (E.D. Mo. 1979); See also App. C-State's Suggested Finding of Facts and Conclusions of Law; Adams vs. U.S. 620 F 2d. 1277 (8th Circuit) en banc, cert. denied, 449 U.S. 826 (1980).

1/ (Footnote continued)

fulfill their affirmative duty to establish and maintian unitary public schools."

On appeal, the Court of Appeals reversed the District Court and held that under the circumstances of this case, the District Court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Adams v. United States, 620, F. 2d., 277 (8th Circuit), 1980, cert. denied, 101 Sup. Ct., 88, 1980.

The Court of Appeals directed that segregation in the elementary and secondary schools in St. Louis must now be eliminated, and instructed the District Court to take necessary steps to bring about an integrated system. The City of St. Louis School Board prepared a plan for desegregating the public schools of the district. However, because of the ratio of black and white students in the system, the plan left 30,000 black students in predominantly black or all black schools in the North St. Louis area of

of the school district.

The District Court and the Eighth Circuit Court of Appeals approved the City Board's plan to desegregate the school system with Paragraphs 12a, 12b, 12c and 12d which specifically addressed the 30,000 black pupils remaining in segregated schools in North St. Louis: 12a being a voluntary plan of transferring students to County schools, 12b merged the vocational educational schools of City and County, 12c called for a mandatory plan of desegregation and 12d called for a study to determine the effects of housing on school desegregation.

Under state law, school districts are delegate agents of the state for the purpose of carrying out the state function of providing a gratutious education for its citizens, ages six to twenty-one.2/

2/ Missouri Constitution Article IX, §(a): "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratutious instruction of all persons in

QUESTIONS PRESENTED

The State of Missouri, in seeking this Court's Writ of Certiorari to the Eighth Circuit Court of Appeals, argues generally:

1. "This case involves an unprecendented order." Pet. P. 10

2. "The remedy is intolerable." Pet. P. 11

2/ (Footnote continued)

this state within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children except in cases otherwise provided for by law."

Missouri Constitution Article IX, §2(a): "The supervision of instruction in public schools shall be vested in a state board of education, consisting of eight (8) lay members appointed by the governor, by and with the advice and consent of the senate. . . ." and in §2(b) it is provided: "The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. . ."

In State ex rel vs. Holmes, 231 S.W. 2d 185, 191 (1950), the Court made these pertinent statements: "Art. IX, Sec 1 of our Constitution says that "the general assembly shall establish and maintain free public schools for the gratutious instruction of all persons in this state within ages not in excess of twenty-one years," but it does not require the General Assembly to divide the state into school districts. The manner of their formation is not regulated by the Constitution.

3. The "quality education and rebuilding program flies in the face of holdings that the Constitution does not guarantee a right to public education at all, much less a right to "develop to the limits of (each student's) ability". . . . or to attend AAA schools." Pet. PP. 11-12

2/ (Footnote continued)

"The fixing of boundaries of school district is a local affair which may be left to the will of the people under a general law providing for the creation of school districts throughout the state." Consolidated School District No. 41 v. Dacus., 189 Okl. 400, 117 P. 2d 508, loc. cit. 510. "No one would contend that the Legislature itself act directly in defining and changing the boundaries of each district in the state, without delegating this to local authorities. . . . . ." State ex rel. School District v. Andrae, 216, Mo. 617, loc. cit. 631, 116 S.W. 561, 564.

"The Legislature has always, as a matter of policy, left to the resident voters the settlement of all questions involving the organization of school districts. The local voters act to determine such questions either through the mode of petitioned elections or by petitions to the appropriate public official or officials clothed by law with the power to annex or detach territory. The resident voters of the particular territory are the delegated agents of the Legislature to administer the enabling leglislation, thereby implementing the leglislative intent to obey the constitutional mandate of insuring the establishment and maintenance of free public schools for the

Footnote continued on page 16

The State then argues specifically:

1. The Order was imposed without proper findings. Pet. P. 12

2. The remedy is unrelated to any provended violation, Pet. P. 16, because it provided for:

a. A Multidistrict Remedy. Pet. P. 16

b. Unauthorized Quality Education and Rebuilding Program. Pet. P. 24

3. The Order wrongfully interfered with decisions about State Programs. Pet. P. 28

At page 16 of the States' Petition for Certiorari, the State proclaims: "There is not dispute over the duty to eliminate the segregation of students within the St. Louis School District. What the States does dispute, and what is at issue here, is the duty to go beyond the district to achieve a racial balance unavailable within the district itself." Continuing on page 17, the State says: "Our position, simply put, is that the federal courts cannot require the State to transport students among districts in order to achieve a racial balance unavailable within the district

where the violation occurred." (Emphasis added).

We would change the emphasized phrase (racial balance) to read "remedy". With some modification of the issue as put by the State, the Liddell Plaintiffs state the question as follows:

Whether this complained of court order calling for additional relief outside the boundaries of the convicted City of St. Louis school district based on the unavailability of that relief within the City district and the voluntary transfer of students between segregated (all black) schools within the convicted City School District and predominantly white suburban school districts, said transfers to be paid for by the convicted State of Missouri as a primary Constitutional wrongdoer is supported on the record (including the decisions and judgments of the lower federal courts) and therefore ought not to be further reviewed by this Court.

DISCUSSION

The complained of Court order calling for Additional Relief Outside the Boundaries of the Convicted City of St. Louis School District Based on the Unavailability of that Relief within the City District and the Voluntary Transfer of Students between Segregated (All Black) schools within the Convicted City School District and Predominantly White Suburban School Districts,

---

2/ (Footnote continued)

gratutious instruction of all persons in this state within ages not in excess of twenty-one years. People v. Deatherage, 401 Ill. 25, 81 N.E.2d. 581."

"We hold that S.B. 307 is not an illegal delegation of legislative power within the meaning of Art. II of the Constitution. The county boards of education who devise the plans for reorganization, the State Board of Education a constitutional body who must approve the plans and the voters of the district are delegated agents of the Legislature to administer this act. This act is not such an exclusive legislative function as may not be delegated to the State Board of Education county boards of education and the voters of the proposed district. Wheeler School District v. Hawley, supra; Gardner v. Ginther, supra; School District v. Callahan, supra. "This is not deemed or considered a prohibited delegation of legislative powers." State ex rel. School District v. Andrae, supra, 216 Mo. loc. cit. 630, 116 S.W. loc. cit. 564."

said transfers to be paid for by the convicted State of Missouri as a primary constitutional wrongdoer, is supported on the record (including the decisions and Judgments of the lower Federal Courts) and therefore ought not to be further reveiwed by this Court.

The Liddell plaintiffs submit that the record, Judgments and decisions of the lower federal courts in this action support the relief approved against the State by the Eighth Circuit Court of Appeals and no further review by this Court is required. In support thereof, the Liddell plaintiffs state as follows:

1. The findings and conclusions of the District Court are supported by the original pleadings and the evidence, and are not contested by the State. Liddell, et al., vs. St. Louis Bd. of Education etc., 491 F. Supp. 454 (1980). See App. A- Original Petition; Appendix E, Testimony of Dr. Kottmeyer and App. G- original District Court findings on neighborhood schools; and 1st Suggested Findings and Conclusions on

Restrictive Covenants.

2. The Findings, Conclusions, and Judgments of the District Court have been consistently confirmed by the Eighth Circuit Court of Appeals. Liddell III, 667 F. 2d. 643 (8th 1981), cert. denied, 454 U.S. 1091 (1982) and Liddell IV, 693 F. 2d. 721 (1981) and Liddell V, 677 F. 2d. (1982) cert. denied, 103 Supreme Court, 172 (1982).

3. The United States Supreme Court has refused certiorari on the question of relief and funding of that relief as presented by the State on at least two prior occasions. Mo. vs. Liddell, 454 U.S. 1091 (1980); Mo. vs. Liddell, 103 S. Ct. 172 (1982).

The Liddell plaintiffs submit that this settlement agreement is based on their supplemental pleadings H(1027)82 for additional relief, by which they adopt all favorable findings, conclusions, opinions and judgments of the District Court and Court of Appeals, and therefore no further review is required. See APP. H-Liddell Plaintiff Supp. Pleadings H(1027)82.

These plaintiffs acknowledge that the Supreme Court has the authority to correct basic errors in the application of federal constitutional law and the proclamation of the law of the case doctrine is not a barrier to this court. We do not believe there is error or injustice in holding that the State of Missouri is a primary constitutional wrondoer and therefore amenable to interdistrict relief under the doctrine of Hills vs. Gautreaux, 425 U.S. 284 (1976).

The State of Missouri and those parties aligned with it err when they ignore the original pleadings and the findings and conclusions of the District Court in 491 F. Supp. 454 (1980) even though they do not contest those findings. The District Court in 1979, after the first hearing, erroneously held in 469 F. Supp., "that resort by the City Board to a neighborhood school policy after the decision in Brown, had eliminated segregation in the City schools, "Liddell vs. Bd. of Education, 469 F. Supp. 1304 (1979); Pet. A2 However, the above quotation is consistent with

the District Court's finding that the St. Louis City Board adopted the neighborhood school policy of student assignment, at least in theory.

The Eighth Circuit, en banc, reversed and held that the neighborhood school policy had little or no effect on pre-Brown segregation or the dual school system in the City of St. Louis; and based how the neighborhoods had been constructed, the policy would reinforce segregated schools, rather than eliminate them. Adams vs. U.S., 620 F. 2d. 1277, 1287, 1291, (1980).

Further, the State in its argument ignores the illegal judicial State policy enforced by defendant State of Missouri and its officers that made the illegal neighborhoods possible. These policies included the enforcement of illegal racial restricted covenants made unenforceable by this Court in Shelley vs. Kraemer, and made illegal by this Court in Jones vs. Mayer. See Fourteenth Amendment to the U.S. Constitution, Shelley vs. Kraemer, 68 Sup. Ct. 836 (1947); Jones vs. Mayer, 88 Sup. Ct. 2186 (1968). See also Richardson vs. Dolan, 181 S.W.

2d. 997 (1944) and cases cited therein.

The State further ignores prior approval of the so-called 12(a) voluntary plan which included suburban school district. That 12(a) plan is a part of the same District Court Judgment that is responsible for this broadened voluntary settlement agreement which was initiated in lieu of the madatory paragraph 12(c) of the Judgment. Liddell vs. Board of Education, 491 F. Supp. 351 (1980), affirmed by the Eighth Circuit Court of Appeals at 667 F. 2d. 643 (1981), cert. denied by this Court at 454 U.S. 1081, 1091 (1982).

In the State's petition for a writ where certiorari was denied in 454 U.S. 1081 the State expressly argued:

> "V. The District Court exceeded its Authrity and Violated Due Process in Paragraph 12(c) of its May 21, 1980 Order in which it Required the Submission of". . .a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation

in the City of St. Louis and St. Louis COunty

"Because, to date, this Litigation has not been Interdistrict in Scope and as a Result no Evidence has been Introduced Which Would even Remotely Call for Submission of Such a Plan."

This Court denied certiorari to the Eighth Circuit Appeals Court. The State had argued the distinctions in the application of Hills vs. Gautreaux and Milliken vs. Bradley (I) cases on interdistrict remedies, and the affirmative duty requirement of Green in State of Mo. vs. Liddell, et al., 103 S. Ct. 172 (1982).

Further, the State's current application for a Writ ignores the fact that this settlement agreement is based on the continuing jurisdiction of the District Court for further relief and on all favorable findings, conclusions, opinions and judgments of the District Court and of the Eighth Circuit Court of Appeals in the original cause of action as expressed in the Liddell Plaintiff's original petition and the Liddell

Plaintiffs' Supplemental Pleadings. See Appendixes A and H.

We submit that the State's erroneous perception of the whole lawsuit is expressed in the following quotation from page 6 of its Petition:

> "Rather, the Court undertook only to decide "Whether (the) proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of the case." Pet. App. 103a

The above quotation from the State's Petition is a part of the opening sentence of the District Court's Memorandum opinion and is misquoted out of context to support the State's cause. The District Court at page 108 of its opinion states elements of its considerations for satisfying the requirements of Federal Rule of Civil Procedure 23(d). Pet. App. B (108a).

These plaintiffs disagree with the District Court's decission of this Agreement as the settlement of an independent lawsuit to determine the liability of all defendants, including the State of Missouri.

These plaintiffs would not and do not relitigate the liability of the State defendants but would seek to determine the degree of culpability of the suburban school districts as they participated in or enforced the segregation laws of the State of Missouri. Further, we submit that any remedial determination does not require the relitigation of the liability of the City of St. Louis District or the State of Missouri. Their liability is fixed by the District Court and the Eighth Circuit Court of Appeals and this Court's denial of Certiorari. Further, these plaintiffs submit that the whole record supports their position that this settlement agreement is designed to eradicate the vestiges of a state mandated racially dual educational systems and establish a unitary system in the statutory St. Louis metropolitan school district. L.R. App. I

It should be noted that in Missouri, public education is made the responsibility of the State legislative authority- the General Assembly, and all persons or bodies exercising any of the

public educations authority do so as delegate agents of the State of Missouri. These include school districts and district constituents, even when voting on matters that may be called local by the State. Holmes, supra.

The Missouri State Constitution makes public school education the responsibility of the state general assembly. Within the realm of legal delegation of power, the legislature delegates certain of its authority to school districts to administer those facets of the education program or machinery that may vary from district to district and therefore need local flavoring; such as teacher employment, student assignments, school boundaries, building construction and maintenance, extracurricula programs, public use of buildings, etc.

The creation of every school district in suburbia, and the State of Missouri, was done pursuant to state legislation in Chapter 162 R.S. Mo. 1968.

The State of Missouri argues in its petition

for a Writ on page 26: "This Court has held on several occasions that students have no right to public education at all." (citations omitted) "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." These abstract statements are misleading and demonstrate the callous approach that Missouri takes to the equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. It is elementary that education is a power reserved to the states and they (the states) may or may not afford public education. But, if the State does afford public education, it cannot discriminate based on race contrary to the Fourteenth Amendment, or laws enacted pursuant thereto.

On page 28, note 26 of the Petition, the State of Missouri makes an unbelievable statement: "While the State is willing to compensate for any deficiencies caused by its prior policies, there has been no showing that students now in

"non-integrated schools" have been put at an educational disadvantage because of the earlier state law."

The State of Missouri does not have clean hands. Every current non-integrated school was non-integrated in 1954 by state legislative mandate, or judicially made possible by the enforcement of racial restrive covenant protecting white neighborhoods from blacks renting or buying therein. See and compare also the State's Suggested Findings of Facts which were adopted verbatim by the District Court in its findings of facts. App. C and App. G.

The State argues that the State of Missouri cannot be derivatively liable as the governmental principal of the delegate agents school districts in their constitutional conduct toward the plaintiff class. This is not our contention.

Our contention is that the school districts derive their constitutional viability and liability from their status as delegate agents of the State of Missouri which has been found judicially to

be a constitutional (liable) wrongdoer for creating, mandating and maintaining a racially dual school system.

See Milliken vs. Bradley I where the U.S. Supreme Ct. rejected derivative liability of the state emanating from the district, the creature of the State.

We propose derivative liability of the district (the creature) emanating from the State, the creator and principal of the district, the delegate agent.

The State of Missouri participated very vigorously in the liability hearings. The State cross-examined witnesses and filed post-hearing suggested findings of Facts, Conclusions of law, and Order. It appears that it was the State's suggested findings of facts that partially influenced the District Court in making its findings of facts in 469 F. Supp. (Compare L.R. App. C with 469 F. Supp. l.c. Slip Opinion Pg. 11.)

Later, the State called witnesses in its behalf, filed other pleadings and fully partici-

pated, but never read the original Complaint or the Supplemental Complaint of the Liddell plaintiffs.

The State of Missouri was not adversely affected by the scheduled July 25, 1877 hearing as it was continued by the District Court to October, so that the State of Missouri could get ready for trial. See Slip Opinion, Pg. 7: "Findings of Facts" where it is stated:

"By order of July 14, 1977, the trial date was postponed to October 17, 1977, in order to permit the State defendants to prepare for trial."

Further, it is difficult to understand the sincerity of the State's and the City's position on the authority of the District Court to enter orders affecting the school district's tax levy, especially, in light of the fact that the State of Missouri was the first to suggest that the District Court should issue an order requiring the St. Louis City School District to increase its levy to cover its share of the desegregation costs. See Paragraph 7 of the State's Conclusions, Pre-Hearing Brief of 469 F. Supp.

The Association seems to argue that black children can not learn effectively in a school of all black students. We disagree, providing that the City Board does not isolate the all black schools from the remainder of the system thereby destroying the unitary school system. The physical facilities, the curriculum programs, and the dedication of the teachers and administrators along with the reducation of classroom sizes to a manageable level, motivated students and parents and discipline can produce a learning atmosphere throughout the system regardless of which race is in the majority. This is what is sought for the children in North St. Louis, and for the entire school system.

It is important to point out that these past pleadings and the evidence previously adduced are not included here for purposes of relitigation of issues already decided favorably to these plaintiffs; but to demonstrate that the State of Missouri had acknowledge of the claims made against it; that it had an opportunity to (and

did) participate fully in the proceedings where the State of Missouri was found to be a constitutional wrongdoer along with the City of St. Louis School District; that the State (when it chose to do so) called witnesses in its behalf at trial and deposition; that the State was at all times ably represented by very competent counsel, and is not the victim of a denial of due process.

CONCLUSION

The Liddell Plaintiffs respectfully submit that for the combined reasons stated in this Supplemental Response and in the joint Response, of the Proponents St. Louis Board of Education, the Liddell and Caldwell plaintiffs, the Application by defendant State of Missouri for the Writ of Certiorari to the Eighth Circuit Court of Appeals should be denied as no further review is necessary.

Respectfully submitted,

JOSEPH S. McDUFFIE

and

*WILLIAM P. RUSSELL
Attorneys for Defendants
408 Olive, Suite 206
St. Louis, Missouri 63102
(314) 621-4525

*Counsel of Record
July 31, 1984